KI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(20)

# आदेश पत्रक

मामला क्रमांक Cr. A No. 1067/04 सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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SB: HON'BLE SHRI DHIRENDRA MISHRA, J.

**APPELLANT** Kosa, son of Bhima Mariya, aged about 44 years, Occupation Mazduri, resident of village- Bahadurgura, Bodhghat, Jagdalpur, P.S. Bodhghat, Distt. Bastar (C.G.

**Vs.**

**RESPONDENT** State of Chhattisgarh

**16.08.2007**

Smt. Meenu Banerjee, Advocate for the appellant.

Shri Neeraj Mehta, Panel Lawyer for the State.

2. This criminal appeal is directed against the judgment of conviction and order of sentence dated 5-3-2004 passed by the Sessions Judge, Bastar Jagdalpur in S.T. No. 460/2003 whereby the appellant has been convicted under Section 307 of I.P.C. and sentenced to undergo R.I. for 7 years with a fine of Rs. 1000/-, in default of payment of fine, to further undergo R.I. for one year.

3. Case of the prosecution, in brief, is that in the intervening night of 24-25th May, 2003 at about 12-12.15 hrs, the complainant victim had gone to attend the call of nature where he saw the appellant who had gone there for fishing. The victim asked the appellant as to what he was doing, at that time the appellant assaulted complainant Amritpal Singh (P.W.1) by the spear over his right ribs and thereby attempted to murder him. On hearing his

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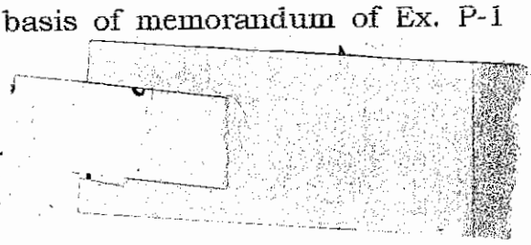
shouts, Tyagraj (P.W. 3) and Vikram (P.W. 1) reached there who took the victim to hospital and the accused fled from there. The report was lodged. The complainant was sent for medical examination to Maharani Hospital, Jagdalpur where Dr. V.K. Jha (P.W. 4) examined him and gave injury report of Ex. P-5 wherein it has been mentioned that Amritpal Singh had sustained a stab injury on his right hypocondrium region of size of 2 ½ x 1 cm, the depth of which could not be measured due to continuous secretion of blood. He advised immediate surgery.

4. After completing investigation, charge sheet was filed under Section 307 of I.P.C. in the Court of Chief Judicial Magistrate, Jagdalpur who in turn committed the case to the Sessions Judge.

5. Learned trial Court on the basis of the statement of Dr. V.K. Jha (P.W. 4) and on the basis of injury report Ex. P-5 held that the injury was caused by the appellant with intention to cause death of Amritpal Singh and further relying upon the statement of the complainant as also the eye-witnesses P.W.1 Vikram Singh Gullar and P.W.3 Tyagraj has held that the prosecution has established involvement of the accused in the crime in question and convicted and sentenced the appellant as mentioned above.

6. Learned counsel for the appellant submits that the weapon of offence spear was seized on the basis of memorandum of Ex. P-1



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recorded on 26-7-2003 i.e. two months after the incident and therefore, the recovery is of no consequence. The fact is that the spear was taken out by the victim himself and the same was given in the police station by one of the friends of the victim. She further argued that the prosecution has failed to establish that the injury sustained by the victim was sufficient to cause death in the ordinary course of nature and, therefore, offence under Section 307 of I.P.C. is not made out and the offence, if any, does not travel beyond Section 324 of I.P.C. Reliance is place on **Ganga Ram –v- State** (1968 Cri.L.J. 134).

7. On the other hand, learned counsel for the State supported the impugned judgment.

8. I have heard the learned counsel for the parties. I have perused the records as also the impugned judgment.

9. P.W. 7 Amritpal Singh, who is complainant and has sustained the injury and who has lodged Dehati Nalish of Ex. P-7 on the basis of which, the F.I.R. of Ex. P-8 has been registered has categorically stated that in the night of the incident, he had gone to attend the call of nature to the pond. He saw the accused there who was going for fishing. He asked the appellant where he was going, whereupon the appellant assaulted him with spear on his stomach. He raised alarm whereupon Tyagraj, Vikarm and Ramesh came to the spot. They took

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him to Maharani Hospital and the accused fled from the place. P.W. 1 Vikram Singh Gullar and P.W. 3 Tyagraj who are the eye-witnesses of the incident, have corroborated the statement of the complainant and have stated that on hearing shouts of Amritpal Singh, they reached to the spot and they saw that the accused was running away. They tried to chase him. In the cross-examination of theses three witnesses, the defence has not been able to elicit anything which makes the statements of these witnesses untrustworthy or unreliable and in the considered opinion of this Court, the trial Court has not committed any illegality in relying upon the statements of these witnesses and holding the involvement of the appellant in the crime in question.

10. Now the second question is whether the injury sustained by the victim was caused by the appellant with an intention to cause his death. To arrive at the conclusion whether the accused had intention to cause death depends upon the weapon of offence, the place of the body over which the injury was caused and the force with which the injury was caused. In the instant case, the appellant with a spear has caused the injury over stomach, a vital part of the body. Dr. V.K. Jha (P.W. 4) has examined the victim on 25-5-2003 at about 5.50 a.m. in the morning. According to the injury report of Ex. P-5 given by this witness, Amritpal Singh sustained penetrating injury on his right hypochondrium region of size of 2 ½ x 1 cm, the depth of which could

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not be measured because of continuous secretion of blood. Exit of this injury was on the lumber region of the stomach which was also of size of 2 ½ cm x 1 cm. Thus looking to the injury that was caused on the person of Amritpal, it is evident that the appellant caused injury by the deadly weapon spear over vital part of the body stomach with such a force that the spear pierced through stomach of victim Amritpal and, therefore, the conviction of the appellant under Section 307 of I.P.C. for attempting to cause death of the complainant Amritpal cannot be faulted.

11. So far as the judgment in the matter of **Ganga Ram** (supra) relied upon by the counsel for the appellant is concerned, in the above judgment also in para 6 and 7, it has been held that it is not necessary that the injury capable of causing death should have been actually inflicted. If the injury is actually inflicted, the nature of the injury may be of some consideration in arriving at the conclusion whether the accused had the intention of causing death. Liability for the offence under Section 307 of I.P.C. will depend upon the circumstances of each case and the injury which the victim sustained in a particular case. In the case under Section 307 of I.P.C., important consideration is intention or knowledge of the accused and the circumstances under which the offence was committed. The intention of the assailant can also be gathered from the nature of the weapon used and the parts of the body where the injuries are

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inflicted. Looking to the fact that the injury was caused by a deadly weapon spear over vital organ stomach and the injury was of such a grievous nature that the spear penetrated through the stomach, the offence under Section 307 of I.P.C. has rightly been held to be made out.

12. In the result, there is no substance in the appeal. The same deserves to be dismissed and it is dismissed.

Sd/-
**DHIRENDRA MISHRA**
**Judge**

[पीछे देखिये